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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,909	06/14/2001	Kyoko Nakamura	44084-496	5551
7590	03/13/2006		EXAMINER	
MCDERMOTT, WILL & EMERY 600 13th Street, N.W. WASHINGTON, DC 20005-3096			NGUYEN, LUONG TRUNG	
			ART UNIT	PAPER NUMBER
			2612	
DATE MAILED: 03/13/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/879,909	NAKAMURA, KYOKO
	Examiner LUONG T. NGUYEN	Art Unit 2612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 27 December 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-13 is/are pending in the application.  
 4a) Of the above claim(s) 3-5,7,8,10,11 and 13 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2,6,9 and 12 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 27 December 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____.
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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Species III, Figures 12-14, in the reply filed on 3/21/2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 3-5, 7-8, 10-11, 13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/21/2005.

### ***Response to Arguments***

3. The Declaration under 37 CFR 1.131 has been considered but is ineffective to overcome the Zhang et al. (US 6,671,391) reference.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Zhang et al. (US 6,671,391) reference to either a constructive reduction to practice or an actual reduction to practice. Applicant must account for the entire period during which diligence is required and the period during which diligence is required must be accounted for by either affirmative acts or acceptance excuses. See MPEP 2138.06.

In addition, it is noted that the Zhang et al. reference (US 6,671,391) was filed in the US on May 26, 2000, which is prior to the filing date of the current application, which was filed in the US on 6/14/2001 and claimed priority filed in Japan on 6/14/2000.

For these reasons, Applicant's arguments filed on 12/27/2005 have been fully considered but they are not persuasive.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 6, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zhang et al. (U. S. Patent No. 6,671,391).

Regarding claim 1, Zhang et al. discloses an image extracting apparatus comprising: an acquiring portion which acquires a plurality of signals each representative of an image of one or more subjects (pluralities of images 56 are input into computer 20 via camera interface 57, Figure 1, Column 2, Lines 30-40, Column 8, Lines 3-10);

a determining portion which determines orientations the subjects based on each of the signals (the face detection system detects both frontal face and non-frontal views of a person's face (orientations of the subjects), Column 2, Lines 20-28, Column 8, Line 60 - Column 9, Line 35).

Zhang et al. fails to specifically discloses an extracting portion which extracts a predetermined signal from among the signals based on the determination. However, Zhang et al. discloses that the computer system 20 includes a monitor 47 for displaying images stored in RAM 25 (Figure 1, Column 8, Lines 20-26). It would have been obvious to include an extracting portion into the system in order to extract signals, which has been detected as frontal face or non-frontal face views of a person's face, to be displayed on the monitor 47. This allows the user can select a desired view of a person's face.

Regarding claim 2, Zhang et al. discloses wherein the signals are acquired from a storage region (RAM 25, Figure 1, Column 8, Lines 10-11) in which the signals are stored.

Regarding claim 6, Zhang et al. discloses wherein the subjects is person's heads (faces of plurality of people, Column 8, Lines 65-67).

Regarding claim 12, Zhang et al. discloses an image extracting method comprising the steps of:

accepting a specification about an orientation (images containing either frontal or non-frontal views of the person's face, Column 1, Lines 65-67);

successively acquiring a plurality of image signals representative of an object of a predetermined orientation from a database in which the image signals are stored (pluralities of images 56, which are either frontal or non-frontal views of the person's face, are input into

computer 20 via camera interface 57, then stored in RAM 25, Figure 1, Column 2, Lines 30-40, Column 8, Lines 3-10);

successively determining whether the orientation of the object represented by the acquired signal specified orientation or not in response to the successive signal acquisition (the face detection system detects both frontal face and non-frontal views of a person's face (orientations of the subjects), Column 2, Lines 20-28, Column 8, Line 60 - Column 9, Line 35).

Zhang et al. fails to specifically discloses displaying, by use of a signal determined to be representative of the specified orientation, an image represented by the signal. However, Zhang et al. discloses that the computer system 20 includes a monitor 47 for displaying images stored in RAM 25 (Figure 1, Column 8, Lines 20-26). It would have been obvious to include the step of displaying, by using a signal which has been detected as frontal face or non-frontal face views of a person's face, an image represented by the signal on the monitor 47. This allows the user can select a desired view of a person's face.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zhang et al. (U. S. Patent No. 6,671,391) in view of (Hagiwara et al. U. S. Patent No. 6,816,611).

Regarding claim 9, Zhang et al. fails to specifically disclose wherein the extracted signals is recorded onto a recording medium. However, Hagiwara et al. teaches a facial region extracting method, in which if the region of interest is a facial region, the position and size of that region are stored in the recording device 165, Figure 16, Column 11, Lines 18-20). Therefore, it would have bee obvious to one of ordinary skill in the art at the time the invention

was made to modify the device in Zhang et al. by the teaching of Hagiwara et al. in order to store a desired image.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUONG T. NGUYEN whose telephone number is (571) 272-7315. The examiner can normally be reached on 7:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, DAVID L. OMETZ can be reached on (571) 272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2612

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LN *LN*  
03/03/06



DAVID OMETZ  
SUPERVISORY PATENT EXAMINER